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To: Chung.Angela@epamail.epa.gov; Szelag.Matthew@epamail.epa.gov; Macchio.Lisa@epamail.epa.gov
Subject: Fw: Science, Law & the Environment blog: Washington's Draft Fish Consumption Guidance V. 2.0: What's Changed Since October 2011?
Date: Thursday, September 13, 2012 12:47:38 PM

Washington's Draft Fish Consumption Guidance V. 2.0: What's Changed Since October 2011?

By **Doug Steding** on September 12th, 2012

Posted in **Clean Water Act**, **Cleanup & Superfund**, **Public Health Policy**, **Rule Making**, **Water Quality**

Ecology released its second draft of its [fish consumption rate technical document last week](#). This updates the [first version of the document released last October](#), which resulted in [over 300 public comments from various interested parties](#). I've blogged on various issues related to fish consumption over the past few years, including some general background available [here](#), Ecology's [policy shift this past July](#), and some of the implications of the former approach were discussed [here](#) and [here](#). In this post, I want to summarize the major changes of Version 2.0, and discuss some of the policy implications.

The most notable change in Version 2.0 is the deletion of a recommended consumption rate to be applied across the state and in various regulatory frameworks. This recommended rate was previously [contained in Chapter 7 of Version 1.0](#), and summarized here:

A default fish consumption rate for use in cleanup decisions should be protective of Washington fish consumers. Based on the evaluations in this report, Ecology is preliminarily recommending a default fish consumption rate (or rates) in the range of 157 to 267 g/day. The range above includes salmon consumption, which, as discussed in this report, is still an issue for further discussion in determining a fish consumption rate. (Additional statistical analysis and data review would be needed to develop an equivalent range reflective of fish consumption that does not include salmon.) Ecology recommends that one or more default fish consumption rates in this range should be used to establish sediment cleanup standards under the SMS rule. In addition, future rulemaking would apply a default rate in this range to surface water cleanup standards under the MTCA rule and water quality standards for surface waters.

----- Forwarded by Marc Stifelman/R10/USEPA/US on 09/13/2012 12:46 PM -----

From: "McCormack, Craig (ECY)" <cmcc461@ECY.WA.GOV>
To: Lon Kissinger/R10/USEPA/US@EPA, Marcia Bailey/R10/USEPA/US@EPA, Marc Stifelman/R10/USEPA/US@EPA
Cc: Sheila Fleming/R10/USEPA/US@EPA
Date: 09/13/2012 12:25 PM
Subject: FW: Science, Law & the Environment blog: Washington's Draft Fish Consumption Guidance V. 2.0: What's Changed Since October 2011?

From: Howard, Sandy (ECY)
Sent: Thursday, September 13, 2012 11:25 AM
To: Laurie, Tom (ECY); Preston, Seth (ECY); Bradley, Dave (ECY); Hankins, Martha (ECY); McCormack, Craig (ECY); Gildersleeve, Melissa (ECY); Conklin, Becca (ECY); Niemi, Cheryl (ECY); Brown, Chad (ECY)
Subject: Science, Law & the Environment blog: Washington's Draft Fish Consumption Guidance V. 2.0: What's Changed Since October 2011?

FYI...

Sept. 12, 2012: Science & the Environment blog

<http://www.sciencelawenvironment.com/2012/09/washington/>

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used to establish sediment cleanup standards under the SMS rule. In addition, future rulemaking would apply a default rate in this range to surface water cleanup standards under the MTCA rule and water quality standards for surface waters.

Arguably, the inclusion of this default consumption rate in a document labeled as “technical” and “guidance” and that has not gone through a formal rulemaking process violates Washington’s Administrative Procedure Act because the fundamental policy choice is not being done within the APA framework for rulemaking. So, Ecology’s removal of policy decisions from this document is a good step forward in focusing on science and leaving the policy issues for a later date. I also think this may be a better approach because the differing statutory frameworks that would have used this default value have different mechanics, so it may be appropriate to consider things like site-specific consumption rates, practicability in achieving goals set by those rates, and other policy tradeoffs in a formal rulemaking process specific to each statutory scheme.

In terms of editorial changes to the document, it is interesting to note that—where chapters previously started considering tribal data—those chapters now present general population data first. In fact, the use of general population data instead of tribal data may be the most notable substantive change. The first version of the fish consumption document provided consumption rates for four tribes (the Columbia River, Tulalip, the Squaxin Island and the Suquamish tribes) and for Asian Pacific Islanders. The revised document includes these four tribes, excludes data for Asian Pacific Islanders, and adds data for the general population. The general population numbers are lower than the tribal numbers—but only by a factor of 2 to 6. That being said, the general population number is still three times higher than the number used in Washington’s Model Toxics Control Act to calculate risk-based cleanup criteria, and more than 25 times greater than the number used to calculate water quality criteria for toxics. So, even if the “general population” number is relaxed relative to tribal numbers, it still represents more stringent cleanup criteria and water criteria for toxics when this guidance is translated into revised regulations.

Finally, another notable change between the first and second versions of the document is the separation of fish consumption based on “all sources” versus a specific waterbody (Puget Sound or the Columbia River, for instance). This is potentially a step towards using site-specific consumption numbers for cleanups or water quality criteria, although the difference for the particular tribes in terms of “All Sources” and, say Puget Sound is not great: That being said, the concept is important, and is one that could be carried forward if Ecology promulgates site-specific consumption regulations in MTCA or site-specific water quality criteria. Comments on Version 2.0 are due October 26, 2012, with more information on how to submit comments [here](#).

From: Google Alerts [<mailto:googlealerts-noreply@google.com>]

Sent: Thursday, September 13, 2012 11:07 AM

To: Howard, Sandy (ECY)

Subject: Google Alert - fish consumption washington

Web

1 new result for **fish consumption washington**

[Washington's Draft Fish Consumption Guidance V. 2.0: What's ...](#)

A default **fish consumption** rate for use in cleanup decisions should be protective of **Washington** fish consumers. Based on the evaluations in this report, Ecology ...

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